

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

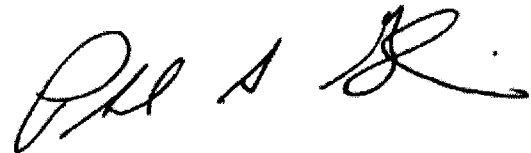
Case No. CV 06-3740-PSG (MLG)

This matter is before the court on a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, following reversal by the United States Court of Appeals for the Ninth Circuit. *Kessee v. Mendoza-Powers*, 569 F.3d 1000 (9th Cir. 2009), amended 2009 WL 2170081 (July 22, 2009). In an order and judgment entered July 7, 2007, this Court adopted the April 27, 2007 Report and Recommendation of United States Magistrate Judge Marc L. Goldman, which concluded that the petition should be granted because the trial court's imposition of an upper term sentence violated the mandate of *Cunningham v. California*, 549 U.S. 270 (2007).

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1 In reversing this decision the Ninth Circuit disagreed. The
2 Court reversed and remanded "with instructions to deny the writ of
3 habeas corpus." Accordingly, it is ordered that judgment be entered
4 denying the petition with prejudice.

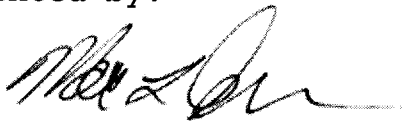
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6 Dated: August 13, 2009

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Philip S. Gutierrez
United States District Judge

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12 Presented by:

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Marc L. Goldman
United States Magistrate Judge